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IN THE

Supreme Court of the United States

No. 866

L. L. SKAGGS, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ROBERT ASH,
Munsey Building,
Washington, D. C.,
Attorney for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Chief Justice and the Justices of the Supreme Court:

The petition of L. L. Skaggs respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED.

Two issues were involved below. Certiorari is sought only on the question of whether the rents from separately owned real estate, located in California, are community or separate income of the petitioner who was domiciled in Texas. The facts on this issue are stated by the Circuit Court of Appeals (R. 41-42):

> "The taxpayer, L. L. Skaggs, was married in January, 1929, and has since been domiciled in Texas. In

1926 he had acquired a building in California, which yielded in the tax year 1934 net rents upon a lease in the amount of $11,468.00."

In California rents from separate real estate are separate income. In Texas they are community income.

The Commissioner of Internal Revenue determined that the said rents constituted separate income (R. 10); the Board of Tax Appeals reversed (R. 14-23), and the Circuit Court of Appeals, Senior Circuit Judge Foster dissenting, reversed the Board (R. 41-46) and sustained the position of the Commissioner.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The decision below is in conflict with *New York ex rel. Cohn* v. *Graves,* 300 U. S. 308, which holds that the law of the domicile governs the right to tax income from real estate rents. The decision of the Circuit Court of Appeals in the case at bar holds that the situs of the real estate which produced the income, rather than the domicile of the recipient, governs the taxation of the income.

II.

The decision below is in conflict with *Irwin* v. *Gavit,* 268 U. S. 161, which holds that a tax on income from property is not a tax on the property producing the income.

III.

The decision below is in conflict with the established law as set forth by the Board of Tax Appeals (R. 16-21) that "rents due or past due are 'simply an item of money due and payable' " and, as such, are choses in action governed by the law of the domicile of the owner.

IV.

The rule established by the court below opens up an avenue of tax avoidance. If, as the Circuit Court held, the situs of real estate governs the taxability of income therefrom, wealthy residents of non-community states can invest in real estate located in Texas, or in other community property states having the Texas rule, and divide the income between husband and wife with the resulting tax saving.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit in the above-entitled and numbered cause.

L. L. SKAGGS,
By:
ROBERT ASH,
Munsey Building,
Washington, D. C.,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

No. .....

L. L. SKAGGS, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the United States Board of Tax Appeals (R. 14-21) is reported at 38 B. T. A. 921. The opinion of the Circuit Court of Appeals, Senior Circuit Judge Foster dissenting, (R. 41-46) is reported at 122 F. (2d) 721.

Jurisdiction.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered September 22, 1941. By order of Mr. Justice Black, dated November 28, 1941, the time for filing a petition for certiorari was extended to and including January 21, 1941. Jurisdiction to issue the writ requested is found in Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

Statement of the Case.

The facts are stated at pages 1 and 2 of this document. For brevities sake, they will not be repeated here.

Specification of Errors.

1. The Circuit Court of Appeals erred in holding that the rent from petitioners separately owned real estate located in California is the separate income of the petitioner, rather than community income, as provided by the law of Texas where petitioner is domiciled.

2. The Circuit Court of Appeals erred in holding that the right to receive income from land constitutes an interest in realty so that the income, for Federal tax purposes, is governed by the law of the situs of the realty, rather than the law of the domicile of the recipient of the income.

Questions Presented.

1. Are the rents from petitioner's separately owned real estate located in California community income to the petitioner domiciled in Texas?

2. Is the right to receive income from land an interest in realty so that the income is governed by the law of the situs of the realty for Federal tax purposes? Or is the said right a chose in action which is governed by the law of the domicile of the recipient of the income?

Petitioner does not seek certiorari in the other issue decided below, namely: Is the gain from the sale of petitioner's separately owned corporate stock community or separate income?

Statutes Involved.

The pertinent statutes involved will be found in the Appendix, *infra*, pp. 12-15.

ARGUMENT.

I.

The decision below is in conflict with decisions of this Court.

The decision below is in conflict with decisions of this Court which hold that a tax on income from land is separate and distinct from a tax on the land.

In *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308, Cohn challenged the New York statute levying a tax on "entire net income," which included rents received by Cohn from New Jersey realty. Cohn contended that the tax was in fact a tax on realty.

In the case at bar the decision below (Senior Circuit Judge Foster dissenting) can stand only on the ground that the right to receive income is an interest in realty. Yet the present Chief Justice in the *Cohn* case states (p. 314):

> "Neither analysis of the two types of taxes, nor consideration of the bases upon which the power to impose them rests, supports the contention that a tax on income is a tax on the land which produces it."

At page 315, it is stated:

> " * * * income derived from real estate may be taxed to the recipient at the place of his domicile, irrespective of the location of the land, * * *"

In the case at bar, we are concerned with realized income from realty. The law of the situs of the realty has no effect upon the income therefrom, insofar as the recipient is concerned. It is stated in the *Cohn* case (p. 316):

> "Here the subject of the tax is the receipt of income by a resident of the taxing state, and it is within its taxing power, even though derived from property beyond its reach."

If the law is established as shown by the *Cohn* case that an income tax is a tax on the receipt of income and not on

its source, and that the state of domicile can tax income from real estate situated outside the state, it necessarily follows that such income must be taxed in accordance with the laws of the state of domicile. In Texas rents from separate property are community income, so it is obvious that the rents here involved are community.

In the case at bar the rule of the *Cohn* case must apply. Otherwise, we would have a tax on real estate, which is a direct tax prohibited by the Constitution.

The Court below says the taxpayer's interest which is taxed is an interest in real estate (R. 45) "an immature crop, like unaccrued rent, is a part of the land; * * *". However, here we are not dealing with unaccrued rent, but with accrued income which is the only income which can be taxed. The analogy to immature crops is specious. Such immature crops would not be taxed as income. However, the income from the mature crops which are harvested and sold would be taxed and the income would be governed by the law of the domicile of the owner. Any other rule would result in boundless confusion, not only to taxpayers but to the administrative officials.

Real estate mortgages certainly represent an interest in realty. Yet, for the purposes of taxation, a mortgage is regarded as situated at the domicile of the creditors. *Kirtland* v. *Hotchkiss*, 100 U. S. 491, involved a situation where Kirtland, a resident of Connecticut, owned certain mortgage bonds secured by Illinois real estate. Each bond provided that "it is made under, and is, in all respects, to be construed by the laws of Illinois". In upholding a personal property tax assessed on the bonds in Connecticut, this Court states (p. 498):

> "That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor."

II.

The decision below is in conflict with the established law that rents due or past due are money due and payable and, as such, are choses in action governed by the law of the domicile of the owner.

Little can be added to the well-reasoned opinion of the Board of Tax Appeals (R. 16-21) on this issue. The Board points out:

> "The respondent contends, however, that the income from the rents from the real estate situated in California must be determined under the laws of that state, which declare them to be the separate property of the owner of the real estate, and that the laws of the State of Texas are not controlling of the question.
>
> "We do not agree with this contention. While under the laws of the State of California rents from the separate estates of the spouses are their separate property—see section 163, Civil Code of California, 1927—this is not the law in the State of Texas as shown above, and in our opinion the status of the income from the rents in question must be determined under the laws of the State of Texas, where the petitioner was domiciled. Rent is said to be a chose in action, that is, personal property. *Richardson* v. *Neblett,* 122 Miss. 723; 84 So. 695.
>
> "It was said in *State* v. *Royal Mineral Association,* 132 Minn. 232; 156 N. W. 128, that rents unaccrued are not personal property but are a part of the land until severed, and that rents due or past due are 'simply an item of money due and payable.' See also *People* v. *McComber,* 7 N. Y. S. 71. In *Broadwell* v. *Banks,* 134 Fed. 470, the court said:
>
> * * * In the absence of any statutory provision to the contrary, it is elementary that the rents which accrued during the lifetime of the owner of the leased premises are personal property, and go to his personal representatives as assets of the estate, * * *
>
> "The ownership and disposition of personal property is uniformly governed by the lex domicilii. *Black*

v. *Zacharie & Co.*, 3 Howard 482; *Whitney* v. *Dodge*, 105 Cal. 192; 38 Pac. 636. In *Thayer* v. *Clarke* (Tex. Civ. App.), 77 S. W. 1050, the court said:

* * * It is well settled that as to all personal property acquired during coverture the law of the matrimonial domicile controls, such property having in theory no fixed situs. As to all real estate so acquired the law of the state in which it is situated controls, * * * See also *Snyder* v. *Stringer*, 116 Wash. 131; 198 Pac. 733; *Douglas* v. *Douglas*, 22 Idaho 336, 125 Pac. 796; *Kraemer* v. *Kraemer*, 52 Cal. 305.

"In *Thayer* v. *Clarke*, *supra*, the court further said:

* * * It is also the law in this state (Texas) that all personal property acquired during marriage is presumed to have been earned by one or the other or both members of the community during the existence of the marriage, and this presumption prevails until it is made to appear that it was owned by the one or the other prior to the marriage, or was acquired during marriage by gift, devise, or descent. * * *

"The rents here in question were not owned by the petitioner before marriage and were not acquired by gift, devise, or descent. They were therefore earnings of the community under the Texas law.

"We think that under the laws of the State of Texas petitioner's wife had a vested interest equal to that of the petitioner in the rents from petitioner's real estate situated in the State of California at the time they were received and that accordingly only one-half of such income is taxable to the petitioner in his separate return. *Hopkins* v. *Bacon*, *supra*.

"If the property here in dispute, that is, the rents from petitioner's real estate, had been acquired by the petitioner as his separate property while domiciled in California and brought into the State of Texas when he established his domicile there, a different rule might apply. See *In re Arms' Estate*, 186 Cal. 554; 199 Pac. 1053; §649 McKay, Community Property. It is generally recognized that vested property rights are not affected by the owner's change of domicile and the removal of the property from a community state to a non-community state or vice versa."

The Board's reasoning is supported by many other authorities:

Broadwell v. *Banks*, 134 Fed. 470, says, in addition to the statement quoted by the Board (p. 473):

> "It is equally elementary law, universally recognized, in most of the states of the Union, that the rentals which had accrued at the time of the lessor's decease were choses in action of the testator's estate."

Corpus Juris states the rule in Volume 36, page 289, as follows:

> "Rent, or more accurately, the right to receive rent, is a species of incorporeal hereditament and is to be classed as real, as distinguished from personal, property. It is an interest or estate in land which may be the subject of a grant or devise. Until separated from the reversion, it constitutes a part of the land and passes as incident to a transfer of the reversion. *Rents which have become due constitute mere choses in action, and are personal property.*" (Italics supplied.) Cited in support of the italicized statement are *Broadwell* v. *Banks*, 134 Fed. 470; *Hayden* v. *McMillan*, 4 Tex. Civ. A. 479, 23 S. W. 430, and other cases.

III.

The rule established by the Court below opens up an avenue of tax avoidance.

If the rule established below is correct, an easy avenue of tax avoidance is available to persons residing in non-community states. They can invest in real estate located in Texas or in other community property states having the Texas rule and the rents will be community income, with the resulting tax benefits. The Court below cites in support of its position *Hammonds* v. *Commissioner*, 106 F. (2d) 420 (C. C. A. 10). In that case Mrs. Hammonds, a resident of Oklahoma, in 1930 received certain oil and gas leases on lands in Texas in exchange for personal services. In 1931 certain of the said leases were sold. In Texas oil and gas

leases constitute an interest in real estate and if Mrs. Hammonds had been a resident of Texas, the gain would have been community. The Board of Tax Appeals, (38 B. T. A. 4) held the gain was separate and the Government acquiesced. 1938-2 C. B. 14. The Tenth Circuit reversed, holding the income was community.

The Ninth Circuit, in a two-to-one decision, followed the *Hammonds* case in *Black* v. *Commissioner*, 114 F. (2d) 355, holding that the income from Washington farm lands was community income to residents of Oregon.

We submit that the *Hammonds* and *Black* cases are wrongly decided and that the rule stated in them offers an easy means of tax avoidance which will adversely affect the public revenues.

Conclusion.

For the reasons stated, it is submitted that this petition should be granted, limited to the California rents issue.

ROBERT ASH,
Munsey Building,
Washington, D. C.,
Attorney for Petitioner.

January, 1942.

APPENDIX.

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 percentum of the amount of the net income in excess of the credits against net income provided in section 25.

SEC. 12. SURTAX ON INDIVIDUALS.

(a) *Definition of "Surtax Net Income".*—As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

(b) *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

* * * * * * * * * *

(U. S. C., Title 26, Sec. 12.)

SEC. 21. NET INCOME.

"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(U. S. C., Title 26, Sec. 22.)

California Civil Code (1872):

SEC. 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

SEC. 161 a.[1] The respective interest of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

SEC. 162. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

SEC. 163. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

SEC. 164.[2] (as amended.) All other property acquired after marriage by either husband or wife, or both, including real property situated in this state, and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this state is community property; * * *.

Revised Civil Statutes of Texas (Annotated), 1925, Vol. 2:

ART. 4613. *Husband's separate property.*—All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control and disposition of his separate property, both real and personal.

---

[1] Enacted in 1927, Statutes and Amendments to the Codes, California, 1927, c. 265, p. 484.

[2] As amended in 1927, Statutes and Amendments to the Codes, California, 1927, c. 487, pp. 826-827.

ART. 4614. *Wife's separate property.*—All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, the interest on bonds and notes belonging to her and dividends on stocks owned by her, shall be the separate property of the wife. The wife shall have the sole management, control and disposition of her separate property, both real and personal; provided, however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.

ART. 4619. *Community property.*—All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife, and during coverture may be disposed of by the husband only. All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved.

ART. 4627. *Rights of persons married elsewhere.*—The marital rights of persons married in other countries who may remove to this State shall, in regard to property acquired in this State, during the marriage, be regulated by the laws of this State.

Texas Laws, Regular, 1929, Act of February 15, 1929, c. 32, p. 66:

SECTION 1. That Articles 4613 and 4614, Title 75, Chapter 3 of the Revised Statutes of Texas, 1925, be amended so as to hereafter read as follows:

"ARTICLE 4613. All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him,

nor for torts of the wife. During marriage the husband shall have the sole management, control, and disposition of his separate property, both real and personal."

"ARTICLE 4614. All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase of all lands thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law."

SEC. 2. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

SEC. 3. The fact that the Legislature has heretofore attempted to establish correlative and equal rights between the husband and wife with respect to the rents and revenues derived from their respective separate estates; and that the Legislature never would have provided, or attempted to provide, that the rents and revenue derived from the husband's separate property should be his separate estate if it had known that the correlative portion of the Statute, which provided that the rents and revenues derived from the wife's separate property should be her separate estate, was in conflict with the Constitution, as heretofore held by the Supreme Court of Texas; and the fact that both of said correlative provisions, though unconstitutional, remain on the Statute Books and are, therefore, confusing and misleading, creates an emergency and imperative public necessity, requiring the suspension of the Constitutional Rule which requires all bills to be read on three days, and the Rule is hereby suspended, and this Act shall take effect and be enforced from and after its passage, and it is so enacted.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 866

L. L. SKAGGS, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 15–21) is reported in 38 B. T. A. 921. The opinion of the Circuit Court of Appeals (R. 41–46) is reported in 122 F. (2d) 721.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 22, 1941 (R. 46). The time for filing a petition for a writ of certiorari was extended to and including January 21, 1942 (R. 47). The petition for a writ of certiorari was filed Jan-

uary 13, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer purchased real estate in California in 1926. He married in 1929, and, while domiciled in Texas in 1934, he received rents from that property. Under California law the real estate as well as the rents were the husband's separate property. Under Texas law, the rents from real estate separately held are treated as community income. Are those rents taxable in full to the husband, or is he taxable only to the extent of one-half thereof?

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra,* pp. 6–11.

STATEMENT

The material facts as stipulated (R. 34–36) and as found by the Board of Tax Appeals (R. 15–16) are substantially as follows:

The petitioner was domiciled in Texas in 1934, and for many years prior thereto (R. 15, 34). In January 1929 he married for the second time, having been previously married and divorced (R. 15, 34).

In 1926, prior to his marriage, he had acquired improved real estate in Oakland, California,

which was leased during 1934 and produced a net rent of $11,468.28 (R. 15, 34).

In his income-tax return for 1934 the taxpayer reported only one-half of the rent from that property upon the theory that the income from this source constituted community income of himself and his wife (R. 15–16, 35).

The Commissioner determined that the total income from this source constituted the separate income of the taxpayer and asserted a deficiency (R. 9, 15). The Board reversed the Commissioner's action (R. 23), but the Circuit Court of Appeals, one judge dissenting, reversed the Board (R. 41–46) and sustained the Commissioner.[1]

ARGUMENT

This case was correctly decided and does not present a conflict of decisions.

It is not disputed that the California real estate was the separate property of the husband under the law of either California or Texas. And it is not disputed that the rent therefrom was the separate property of the husband under California law. See Section 163, California Civil Code, Appendix, *infra*, p. 7. But petitioner contends that since, under Texas law, the rents from sep-

[1] Another item involving income from gain on sale of stock, separately held by the husband, was also decided in favor of the Commissioner by the court below, but the petition does not seek review of that portion of the decision (Pet. 6).

arately held property are community income,[2] he is chargeable with only one-half the rents involved herein.

However, it is plain that California, having the undoubted power to determine the rights and incidents of ownership with respect to real estate situated within its borders, may determine the rights with respect to the rents which flow therefrom. This California has done; and it has decreed that rents derived from separately held real estate belong to the owner of the real estate alone, rather than jointly to the owner and his spouse.

The court below correctly gave effect to these provisions, and sustained the determination of the Commissioner to tax all of the rents to the husband. Its decision is not in conflict, as alleged by petitioner, with *New York ex rel. Cohn* v. *Graves,* 300 U. S. 308. The latter case simply held that New York could constitutionally tax income received by a citizen of New York which had been derived from New Jersey real estate. It is not in the least inconsistent with the view that New Jersey may determine *who* shall be entitled to the rents when they accrue; it merely holds that once the rents accrue, under New Jersey law, in favor of a citizen of New York, New

[2] It may be conceded *arguendo* that rents from property separately held in Texas constitute community income to Texas spouses; but it is far from clear, even under Texas law, that the same rule applies with respect to real estate situated *outside* of Texas.

York may include such rents in the measure of the tax which it seeks to collect from him.

Here, California has determined that the rents from separately held real estate belong to the owner, and it is upon such income that the federal tax is imposed. It cannot be material that Texas may undertake to superimpose its system of law over that of California by declaring that once the rents are received by the husband as his separate income and property in California they shall thereafter belong equally to each spouse.[3] Cf. *Lucas* v. *Earl*, 281 U. S. 111; *Helvering* v. *Eubank*, 311 U. S. 122; *Helvering* v. *Horst*, 311 U. S. 112.

CONCLUSION

The case was correctly decided by the court below. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
J. LOUIS MONARCH,
WARREN F. WATTLES,
Special Assistants to the Attorney General.

FEBRUARY 1942.

[3] As indicated in the preceding footnote, there is serious doubt whether Texas has so undertaken to define the rights of its citizens with respect to out-of-state real estate. Petitioner has not referred to a single Texas decision holding that income from separately held out-of-state property is to be treated as community income.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25. (U. S. C., Title 26, Sec. 11.)

SEC. 12. SURTAX ON INDIVIDUALS.

(a) *Definition of "Surtax Net Income".*—As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

(b) *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

* * * * *

(U. S. C., Title 26, Sec. 12.)

SEC. 21. NET INCOME.

"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(U. S. C., Title 26, Sec. 21.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership

or use of or interest such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * * (U. S. C., Title 26, Sec. 22.)

California Civil Code (1872):

SEC. 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

SEC. 161a.[4] The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

SEC. 162. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

SEC. 163. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

SEC. 164.[5] [As amended.] All other property acquired after marriage by either

[4] Enacted in 1927, Statutes and Amendments to the Codes, California, 1927, c. 265, p. 484.

[5] As amended in 1927, Statutes and Amendments to the Codes, California, 1927, c. 487, pp. 826–827.

husband or wife, or both, including real property situated in this state, and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this state is community property; * * *.

Revised Civil Statutes of Texas (Annotated), 1925, Vol. 2:

ART. 4613. *Husband's separate property.*—All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control and disposition of his separate property, both real and personal.

ART. 4614. *Wife's separate property.*—All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, the interest on bonds and notes belonging to her and dividends on stocks owned by her, shall be the separate property of the wife. The wife shall have the sole management, control and disposition of her separate property, both real and personal; provided, however, the

joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.

* * * * *

ART. 4619. *Community property.*—All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife, and during coverture may be disposed of by the husband only. All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved.

* * * * *

ART. 4627. *Rights of persons married elsewhere.*—The marital rights of persons married in other countries who may remove to this State shall, in regard to property acquired in this State, during the marriage, be regulated by the laws of this State.

Texas Laws, Regular, 1929, Act of February 15, 1929, c. 32, p. 66:

SECTION 1. That Articles 4613 and 4614, Title 75, Chapter 3 of the Revised Statutes of Texas, 1925, be amended so as to hereafter read as follows:

"ARTICLE 4613. All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands

thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control, and disposition of his separate property, both real and personal."

"ARTICLE 4614. All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase of all land thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law."

SEC. 2. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

SEC. 3. The fact that the Legislature has heretofore attempted to establish correlative and equal rights between the husband and wife with respect to the rents and revenues derived from their respective separate estates; and that the Legislature never would have provided or attempted to provide, that the rents and revenue derived from the husband separate property

should be his separate estate if it had known that the correlative portion of the Statute, which provided that the rents and revenues derived from the wife's separate property should be her separate estate, was in conflict with the Constitution, as heretofore held by the Supreme Court of Texas; and the fact that both of said correlative provisions, though unconstitutional, remain on the Statute Books and are, therefore, confusing and misleading, creates an emergency and imperative public necessity, requiring the suspension of the Constitutional Rule which requires all bills to be read on three days, and the Rule is hereby suspended, and this Act shall take effect and be enforced from and after its passage, and it is so enacted.

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